IN THE HIGH COURT OF JUDICATURE OF BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 4186 OF 2004

Laxmi @ Babita Nagappa Koli ... Applicant

versus

State of Maharashtra ... Respondent

...

Mr. S.V. Kotwal i/by Mr. S.S. Bhandary, for the Applicant.

Mr. D.R. More, A.P.P., for the State.

...

CORAM : A.M.KHANWILKAR,J.

26th October 2004

P.C.:

. Two contentions have been raised before me. The first argument canvassed before this Court is that the contraband item was recovered during the search of person of the Applicant and that search was not in conformity with the requirement of Section 50 of the N.D.P.S. Act. This submission does not commend to me. There is substance in the argument canvassed by the learned A.P.P. that on fair reading of the

panchnama, it is seen that the Applicant was carrying contraband item in a plastic bag, which was in her right hand, which was admittedly concealed under the "Padar" of her saree (end portion of a woman's saree that is brought up from around the waist to fall over the shoulders). In that sense, the search was not of person, but in relation to the packet which was tried to be concealed by the Applicant. If it is so, applying the legal position stated by the Apex Court in State of Punjab v. Baldev Singh reported in 1999 (4) S.C.C. 595 that if a person is carrying a bag or some other article with him and narcotic drug or the psychotropic substance is found from it, it cannot be said that it was found from his 'person'. Viewed in this perspective, the submission canvassed on behalf of the Applicant about non-compliance of section 50 of the Act cannot be sustained.

. It was next contended that the Applicant was searched in the presence of other police officers and which resulted in infraction of section 50(4) of the Act. Reliance was placed on the unreported decision of our High Court in Criminal Application No. 2357 of 1991 dated 15th

October 1991 in the case of Smt. Hamidabanoo Aziz Abdulla @ Mahmood Shaikh v. The State of Maharashtra, as well as another judgment of Division Bench of our High Court reported in 1997 ALL MR (Cri) 368 in the case of Mrs. Veneela Tilak v. Shri Shahasane, Asstt. Collector of Customs and Anr. As mentioned earlier, the search from which the contraband was recovered was not in relation to person, but of the packet, which was carried by the Applicant and attempted to be concealed. In that sense, the question of infraction of section 50(4) of the Act does not arise. During the later search of person, the panchnama reveals that necessary procedure was followed by taking the Applicant in a secluded place and the search was undertaken by female officers and female panch witness. However, nothing has been recovered during that search. Be that as it may, the fact remains that the Applicant has been found carrying the contraband item of commercial quantity. If it is so, rigours of section 37 of the Act would apply and as there is sufficient material, it is not possible to take the view that the Applicant is not guilty of the alleged offence. Hence, this application should fail and the same is

dismissed.

. As the Applicant is in custody since Novermber 2003, the trial Court is directed to expedite the hearing of the case.

(A.M.KHANWILKAR,J.)